

followed by forming conductive contacts to the metal plugs and the bit line plug,” referred to herein as Species II, be examined with the claims relating to Species I. (Office Action at 2). Under the practice applicable to election of species, the examiner, in order to establish reasons for insisting upon restriction, must show by appropriate explanation one of the following: (a) separate classification thereof; (b) a separate status in the art when they are classifiable together; or (c) a different field of search. MPEP § 808.02. Since the Examiner has not made a showing of separate classification, status, or field of search, restriction between the designated species is believed to be improper.

As noted by the Examiner, claims 1-7, 9, 10, 18, 19, and 21 are generic to both species. (Office Action at 2). Pursuant to 37 C.F.R. § 1.146, upon allowance of any one of these generic claims the remainder of the claims should be considered as well.

Additionally, M.P.E.P. § 803 states in part: “If the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to distinct or independent inventions.” (emphasis added). Given the circumstances of this case, it would not be a serious burden for the Examiner to examine the claims reading upon Species I and Species II (claims 1-22) at this time. Claims 1-22 are directed to similar methods and the search for the claims of Species I would necessarily overlap the search for Species II. A majority of the claims, specifically claims 1-7, 9, 10, 18, 19, and 21, are generic. Moreover, species II includes only one non-generic claim: claim 22. Accordingly, no undue burden would be involved in examining these claims together.

Applicants’ election is made without prejudice. As noted by the Examiner, upon the allowance of a generic claim, Applicants will be entitled to consideration of claims to additional species, provided that all claims to each additional species are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.146.

Application No.: 09/986,167
Response to Elec. Of Species Req. dated June 6, 2003
Reply to Election Requirement dated May 14, 2003

Docket No.: M4065.0463/P463

An action on the merits of all the claims and a Notice of Allowance thereof are respectfully requested.

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Respectfully submitted,

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